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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,499	10/24/2002	Dorothy P. Laflamme	115808-462	9080

29157 7590 07/10/2008  
BELL, BOYD & LLOYD LLP  
P.O. Box 1135  
CHICAGO, IL 60690

EXAMINER
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LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1615

NOTIFICATION DATE	DELIVERY MODE
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07/10/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATENTS@BELLBOYD.COM

## Office Action Summary

Application No.

10/065,499

Applicant(s)

LAFLAMME ET AL.

Examiner

NEIL LEVY

Art Unit

1615

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period **will** apply and **will** expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply **will**, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 17-59 is/are pending in the application.
- 4a) Of the above claim(s) 17-55 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 56-59 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 17-59 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

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### **DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

]Claims 17-59 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 12/12/05.

### ***Claim Rejections - 35 USC § 103***

Claim 56 stands rejected under 35 U.S.C. 103(a) as being unpatentable over BOUDREAU et al 4267195

Claimed are compositions, not methods; thus, in 56; the comparison to a higher protein level is not of patentable weight as a limitation of the composition. The same is true of claim 58.

BOUDREAU adds lysine and cysteine to complete dog foods (column 2, lines 30-36), simply mixing the amino acids into the feed (column 2, lines 44-46). We take the whole dog food to include the water as part of the food, the gravy portion. The 1-3% of dry cysteine is therefore the amount one of ordinary skill would add if mixing with the whole food, contrary to the applicant's arguments.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize a feed additive to improve palatability, to use one of BOUDREAU to provide a nutritious feed. . It would be obvious to vary the nature of feed form to optimize the effects desired – texture, taste , or storage & convenience, as is well known by the artisan to achieve. There is no unobvious and/or unexpected results obtained since the prior art is well aware of the use various forms of dog food, & BOUDREAU provides an example, which leads one to the concentrations required to affect palatability, whether of the gravy + solid food exemplified or mixed with the food, as stated by BOUDREAU as one of a number of modes.

Also, lysine is not required in claim 56.

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Claims 57-59 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over SUNVOLD et al 6306442.

Complete diets of protein (10-32%) fat and carbohydrate (column 2, bottom) are supplemented with lysine (column 3, top) at 0.01-0.22%. The diets were conventional diets (Example 1) but of higher protein. The lysine thus was 22 x 32 or 7% of protein.

Claimed are compositions, not methods; thus, the comparison to a higher protein level is not of patentable weight as a limitation of the composition in claim 58.

### ***Response to Arguments***

Applicant's arguments filed 4/02/08 have been fully considered but they are not persuasive. Applicant's arguments have been considered in the continued rejection, modified accordingly. Review finds Sunvold shows the instant invention as claimed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/NEIL LEVY/  
Primary Examiner, Art Unit 1615